

REMARKS/ARGUMENTS

These remarks are submitted in response to the Office Action dated November 4, 2008 (Office Action). As this response is timely filed within the 3-month shortened statutory period, no fee is believed due. However, the Examiner is expressly authorized to charge any deficiencies to Deposit Account No. 50-0951.

Claim Rejections – 35 USC § 112

It was asserted that the limitation "the merchant specified product" recited in line 21 of Claim 1 has insufficient antecedent basis.

Appropriate correction has been made.

Claim Rejections – 35 USC § 103

Claims 1-9 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Published Patent Application No. 2001/0014868 to Herz (hereinafter Herz) in view of U.S. Published Patent Application 2001/0039514 to Barenbaum (hereinafter Barenbaum).

Although Applicants respectfully disagree with the rejections, Applicants have amended Claim 1. As discussed herein, the claim amendments are fully supported throughout the Specification. No new matter has been introduced by the claim amendments.

The Claims Define Over The Prior Art

Advertising can be an important aspect of any successful business. Differing methods of advertising are continually devised in an effort to appeal to consumers and to

entice those consumers into visiting a merchant's store. One particularly effective and popular method of advertising can be mass marketing. Mass marketing is a method of advertising intended to attract the interest of vast numbers of consumers. Mass marketing is able to reach large numbers of consumers by using various delivery methods, such as newspapers, mass mailings, and electronic mail to deliver promotional material efficiently to the consumer. For example, merchants can distribute promotional material, such as a coupon or an invitation to visit the merchant's store, through the mail or within an ad in a newspaper. In this manner, consumers can become more aware of what a particular merchant has to offer. Notably, advertising, and especially mass marketing, can be equally as important with regard to on-line merchants, as well as off-line merchants, commonly referred to as "brick and mortar" merchants. See page 2, line 12 to page 3, line 4 of the Specification.

Though advertising can be important to both on-line merchants and off-line merchants, it has been on-line commerce systems that have taken advertising into new directions. For example, on-line commerce systems enable the merchant to provide individually tailored incentives to consumers on a mass marketing level. Conventional on-line commerce systems can use several types of information to design effective advertising campaigns. One such type of information can be demographic information. On-line commerce systems often can use demographic information to determine a set of likely consumer preferences. For example, if a merchant's consumer base is comprised of young males, and demographic data suggests that young males like sports cars, and particularly sports cars within a specific price range, then the on-line commerce system can provide that demographic group of consumers with such promotional material. See page 3, lines 5-15 of the Specification.

Another type of information used by on-line commerce systems can be personal consumer information. This information is provided directly from the consumer. For example, a consumer can fill out a survey form indicating the consumer's preference for particular goods and services, as well as information relating to the consumer's buying habits and income. An on-line commerce system can analyze this information in an effort to provide the consumer with advertising corresponding to goods likely to be desired by that consumer. Common examples of this technology can be web sites requiring a consumer to log in to the web site. Typically, a consumer has provided personal information to acquire a user name and a password. Thus, after logging in to the web site, the web site can dynamically determine and display advertising corresponding to the consumer's preferences. See page 3, line 16 to page 4, line 4 of the Specification.

Another type of information used by on-line commerce systems can be past consumer purchasing behavior. This advertising technique is referred to as data mining. Through collection of past consumer purchase information, merchants can provide promotional material relating to products or services which consumers have purchased from the merchant in the past. See page 4, lines 5-9 of the Specification.

Although conventional on-line commerce systems and traditional mass marketing techniques can increase consumer demand for products, such systems can be limited with regard to the manner in which promotional material is provided to consumers. For example, conventional commerce systems, both on-line and off-line, can be limited to targeting consumers having a stated or inferred preference for particular goods or services. See page 4, lines 10-15 of the Specification.

The present invention provides a method for stimulating commerce. In particular, the invention can stimulate shopping among consumers. The invention involves tracking consumer purchase information containing consumer identifying information and product information. The invention can determine from the consumer purchase information which consumers are in need of replacement products or product upgrades. Notably, products can include goods, services, or a combination of both. The invention can associate promotional material corresponding to the products needing replacement or

upgrade with the identified consumers. The associated promotional material can be made available to the identified consumers through one or more delivery systems. See page 5, lines 2-11 of the Specification.

The inventive method of the present invention can begin by establishing a computer communications session between a merchant computer system and a remote computer system and reading consumer purchase information from the merchant computer system. The consumer purchase information can include consumer identifying information and product information. Notably, the product information can include product expiration information and product identifying information. Based on the consumer purchase information, which can be read from a purchase history database, the method can include identifying one or more consumers in need of one or more products. The identifying step further can include determining a product consumption rate from the consumer purchase information to identify the one or more consumers in need of one or more products. The step of identifying one or more consumers can be responsive to a merchant request or detecting a business necessity in an inventory management system. Additionally, the one or more products can be goods, services, or both. Further the method can include associating the promotional material corresponding to the one or more products with the identified consumers in the remote computer system. The method also can include making the promotional material available to the identified consumers. The promotional material made available to the identified consumers can be in electronic or printed format. See page 5, line 12 to page 6, line 7 of the Specification.

Herz discloses a system for the automatic determination of customized prices and promotions automatically constructs product offers tailored to individual shoppers, or types of shopper, in a way that attempts to maximize the vendor's profits. These offers are represented digitally. They are communicated either to the vendor, who may act on them as desired, or to an on-line computer shopping system that directly makes such offers to shoppers. Largely by tracking the behavior of shoppers, the system accumulates extensive profiles of the shoppers and the offers that they consider. The system can then

select, present, price, and promote goods and services in ways that are tailored to an individual consumer. Likely shoppers can be identified, then enticed with the most effective visual and textual advertisements; deals can be offered to them, either on-line or off-line; detailed product information screens can be subtly rearranged from one type of shopper to the next. Furthermore, when a product can be tailored to a particular shopper, a general technique or expert system can offer each consumer an appropriately customized product. See the Abstract.

As already discussed in the previous response, Herz focuses on up-selling and cross-selling as a way of driving sales. As such, Herz's subject matter is completely different from that of the present invention which focuses on a separate inventory system that the present invention uses as an input to determine what products need to be moved. The shopping stimulation system identifies one or more consumers in need of the products that need to be moved.

It was asserted on page 8 of the Office Action that Herz teaches recommending upgrades to a computer system because demands and performance problems (i.e. obsolete) due to the life cycle of the product (see paragraph 246).

As already discussed in the previous response, Paragraph [0246] of Herz states: "As another example, an expert system might recommend a particular set of upgrades to a computer system, perhaps both by asking a set of questions to management and by consulting system logs that document the demands placed on the existing system and the consequent performance." It is not clear how the demands placed on the existing system and the consequent performance can make the computer system obsolete.

As already provided in the previous response, the following example clearly illustrates the difference between "obsolete" and "upgrade": assuming there are square pegs and square holes, when the next version of the holes are round, the square pegs are obsolete. They cannot be upgraded. They have to be replaced even though they are perfectly fine square pegs.

It is stated on page 11, lines 20-21 of the Specification of the instant application: "Product expiration information also can correspond to the life cycle of a product, which typically does not wear out, but rather becomes obsolete or otherwise undesirable." It is clear from this sentence that the life cycle of a product can make the product obsolete or otherwise undesirable. Therefore, "undesirable" is not the definition of "obsolete," but rather an alternative consequence of the product expiration information. The fashion example given on page 12, lines 1-6 of the Specification of the instant application is not an example of an "obsolete" product, but rather an example of "undesirable" product. The same analysis applies to the examples provided in paragraph [0018] of Barenbaum. The summer dresses are no longer desirable at the end of the summer season, but they are still useful and thus not "obsolete."

As also already discussed in a previous response, there is a clear difference between expiration and obsolescence. Many products have expiration dates and, when the date is reached, they can be replaced with the same but newer product. For example, an expired license can be renewed. But, becoming obsolete is different. For example, let's say you have a cover for an item of certain dimensions and the item is worn out. When you go to buy a replacement for the item, you find that one in those dimensions is no longer made. The replacement item has dimensions such that your cover won't fit it. The cover is then rendered obsolete, not expired. If you buy the replacement item, you need a new cover, too, but this is because your cover has become obsolete, not expired.

It was asserted on page 9 of the Office Action that Herz teaches obtaining demographic information about shoppers (see paragraph 31) and using the information to target offers to the shoppers' mailing addresses or electronic mails (see paragraph 51).

However, it is noted that the present invention concerns determining the appropriate communication mode for delivering the promotional material based upon communication mode information uniquely corresponding to a particular consumer. In contrast, Herz concerns determining which shoppers are to be targeted as a group based on demographic information.

Further, it is noted that the present invention solves a business problem that is not solved by any prior art. Consider the case where a warehouse is expected to take delivery of a truckload or rail car load of item 'A' next week and that the current warehouse capacity to stage item 'A' is limited due to poor or slow sales. This is where the present invention can help by first offering promotions for item 'A' to shoppers likely to purchase it in an attempt to alleviate the impending warehouse storage problem. Herz or Barenbaum does not link to a supply chain (i.e., merchant inventory system) like the present invention.

The present invention has connections to merchant inventory systems so that shoppers may be enticed to make specific purchases to ease a pending or impending inventory crisis (see Specification, p. 9, lines 13-16, "Moreover, the invention can identify such customers based upon a merchant request or in the event of a business necessity, such as a merchant having excess inventory, a merchant experiencing a revenue shortfall, a merchant receiving a shipment of goods . . . ;" and p. 21, lines 8-19, "For example, the merchant can have excess inventory or require warehouse space to accommodate a new shipment of product. Accordingly, the merchant can request that the CSS identify consumers in an effort to sell product to those consumers thereby making space for new product shipments. Alternatively, the CSS automatically can be responding to an identified business necessity as determined by accessing the merchant inventory management system and purchase history database. For example, the CSS can determine statistical norms of inventory levels from the merchant's inventory management system. Thus, deviation from those established norms can cause the CSS to respond by identifying consumers likely to purchase or needing the excess product. Another embodiment can allow the merchant to provide the CSS with inventory parameters or guidelines specifying acceptable amounts of inventory at particular times of the year."). Herz describes a method of presenting customer promotions (prices, item, etc.) based on a shopper's profile and history in order to drive sales. Herz lacks the requisite tie to the merchant inventory system and hence cannot create a custom

promotion to address an inventory crisis, especially an impending one which Herz cannot predict.

Accordingly, the cited references, alone or in combination, fail to disclose or suggest each and every element of Claim 1, as amended. Applicants therefore respectfully submit that amended Claim 1 defines over the prior art. Furthermore, as each of the remaining claims depends from Claim 1 while reciting additional features, Applicants further respectfully submit that the remaining claims likewise define over the prior art.

Applicants thus respectfully request that the claim rejections under 35 U.S.C. § 103 be withdrawn.

CONCLUSION

Applicants believe that this application is now in full condition for allowance, which action is respectfully requested. Applicants request that the Examiner call the undersigned if clarification is needed on any matter within this Response, or if the Examiner believes a telephone interview would expedite the prosecution of the subject application to completion.

Respectfully submitted,

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